

Express Mail No. EV780362359US Date of Deposit: October 12, 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

Leviten, Michael W.

Examiner:

Wilson, Michael C.

Serial No.:

09/887,552

Group Art Unit:

1632

Filed:

June 21, 2001

Docket No.:

R67/75658.197

Confirmation No.

5854

Title:

Transgenic Mice Containing Cerberus Gene Disruptions

## DECLARATION OF MICHAEL LEVITEN PURSUANT TO 37 C.F.R. § 1.131

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

- I, Michael Leviten, residing at 3166 Bryant Street, Palo Alto, CA 94306, hereby declare:
- 1. I am a joint inventor of the subject matter claimed in the above-cited patent application, entitled "Transgenic Mice Containing Cerberus Gene Disruptions."
- 2. I am familiar with the above-cited application. I am also familiar with the Office Action mailed June 22, 2005. I am aware that the Examiner has rejected the claims as anticipated under 35 U.S.C. § 102(a) by Stanley et al., Genesis, 2000, 26:259-264, which according to NCBI records was published in April 2000. The reference discloses a mouse having the first coding exon of the *Cerl* gene replaced with a *lacZ* reporter.
- 3. The claimed invention, a transgenic mouse having a disruption in the *Cerl* gene, was invented prior to the publication date of April 2000 of the Stanley reference. In support, attached are printout pages from Assignee Deltagen's internal FileMaker animal tracking database. On each page, the box entitled "Target #" shows the number "67" which is Deltagen's internal reference number for the *Cerl* gene (see also the box entitled "Target Info" and the docket

number of the instant case). On page 1, it can be seen that heterozygous mice were born on November 11, 1999. On page 2, it can be seen that homozygous mice were born on January 25, 2000.

- Thus, heterozygous and homozygous mice within the scope of the claims were actually 4. reduced to practice prior to the April 2000 effective date of the Peters reference.
- I further declare that all statements made herein of my own knowledge are true; and 5. further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.

Michael Leviten

LO 1/2 (US.



DELTAGEN Mice
Sex   DOB   Age   DOD   ES parent % chimerism   Agg   M
Sex
France   177   179   1
Semilar   Control   Reserve   Control   Reserve   Control   Reserve   Control   Reserve   Rese
Complete   Cards   Delta   Date   D
Third
Comments
Third   Thir
Commerts   Frontivist   Front
Part   1975
Table
Cardis in No. (55)
Condition   Cond
Cards   Park   Cards   Deltagen   Change   Cards   Park   Par
Cards   No. Mick   Cards   Dehagen   Change   Sex   Mating Rives   Cards   Dehagen   Sex   Date   Day   Status   Scientist   Complete   Scientist   Cards   Dehagen   Cards   Day   Status   Scientist   Cards   Cards   Cards   Day   Status   Scientist   Cards
Date   Day   Status   Scientisty   Status   Scientisty   Status   Scientisty   Status   Scientisty   Scien
Date   Day   Status   Scientist   NeoC Confirmed   Day   Complete   Harrabi, Ons   Complete   Second   1/6/2000   Thursday   Complete   Work   Complete   Work   Painter   Day   Complete   Work   Painter   Day   Complete   Work   Painter   Day
Mating first   12/2/1999   Thursday   Complete   Harrabi, Ons   Work   All Work   Egrore 40 days   Second   1/6/2000   Thursday   Complete   Work
Second   1/6/2000   Thursday   Complete   Complete   Work   Prime   Complete   Work   Children
Second
Siblings   Same Chimena      Same ES
Same
Mouse   number   Sex   DOB   DOD   Age   Gen. RS # Chim. RS   4%   Cons. TC # +/. GL ?
Number   Sex   DOB   DOD   Age   Gen. RS # Chim. RS   W   Cons. TC # +/- GL?
Number   Sex   DOB   DOD   Age   Gen. RS # Chim. RS   W   Cons. TC # +/- GL?
28300   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   1   Wild-ty   20   28301   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   2   Wild-ty   20   28302   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   3   Wild-ty   20   28303   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   4   Wild-ty   20   28304   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   5   Wild-ty   20   28305   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   6   Wild-ty   20   28306   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   7   Wild-ty   20   28307   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   8   Wild-ty   20   28308   male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   9   Wild-ty   20   28309   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   10   Heteroz   20   28310   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   11   Wild-ty   20   28311   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   12   Wild-ty   20   28312   female   11/11/1999   5/17/2000   N/A days   2   905   3333   R1   269   13   Heteroz   20   28313   female   11/11/1999   5/17/2000   N/A days   2   905   3333   R1   269   14   Heteroz   20   28314   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   14   Heteroz   20   28314   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   15   Wild-ty   20   28315   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteroz   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteroz   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteroz   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteroz   20   28316   female   11/11/1999   12/
28301 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   2   Wild-ty   20   28302 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   3   Wild-ty   20   28303 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   4   Wild-ty   20   28304 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   5   Wild-ty   20   28305 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   6   Wild-ty   20   28306 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   6   Wild-ty   20   28307 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   8   Wild-ty   20   28308 male   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   9   Wild-ty   20   28309   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   9   Wild-ty   20   28310   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   10   Heteros   20   28311   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   11   Wild-ty   20   28312   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   13   Heteros   20   28313   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   14   Heteros   20   28313   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   15   Wild-ty   20   28315   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteros   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteros   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteros   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteros   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   16   Heteros   20   28316   female   11/11/1999   12/14/1999   N/A days   2   905   3333   R1   269   17   Wild-ty   20   28316   female   11/11/1999   12/14/1999   N/
28302 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 3 Wild-ty   _g
28303 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 4 Wild-ty 20 28304 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 5 Wild-ty 20 28305 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 6 Wild-ty 20 28306 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 7 Wild-ty 20 28307 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 8 Wild-ty 20 28308 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 9 Wild-ty 20 28309 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 10 Heterox 20 28310 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 10 Heterox 20 28311 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 11 Wild-ty 20 28311 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 12 Wild-ty 20 28312 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 13 Heterox 20 28 28313 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 14 Heterox 20 28 28314 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 14 Heterox 20 28 28314 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heterox 20 28 28315 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heterox 20 28 28316 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heterox 20 28 28316 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heterox 20 28 28317 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 17 Wild-ty 20 28317 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 17 Wild-ty 20 28317 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 73 Wild-ty 20 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 20 28 28319 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 W
28304 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 6 Wild-ty 28305 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 6 Wild-ty 28306 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 7 Wild-ty 28307 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 8 Wild-ty 28308 male 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 9 Wild-ty 28309 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 10 Heteroz 28310 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 11 Wild-ty 28311 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 11 Wild-ty 28311 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 12 Wild-ty 28312 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 13 Heteroz 28313 female 11/11/1999 5/17/2000 N/A days 2 905 3333 R1 269 13 Heteroz 28314 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 14 Heteroz 28314 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 15 Wild-ty 28315 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heteroz 28316 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heteroz 28316 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 16 Heteroz 28316 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 17 Wild-ty 28317 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 18 Wild-ty 28317 female 11/11/1999 12/14/1999 N/A days 2 905 3333 R1 269 73 Wild-ty 28317 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28317 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A days 2 905 3333 R1 269 74 Wild-ty 28318 female 12/2/1999 1/13/2000 N/A d
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28307 male 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 9 Wild-ty □ 20 28308 male 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 10 Heteroz □ 20 28310 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 11 Wild-ty □ 20 28311 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 11 Wild-ty □ 20 28312 female 11/11/1999 5/17/2000 N/A dayS 2 905 3333 R1 269 12 Wild-ty □ 20 28313 female 11/11/1999 5/17/2000 N/A dayS 2 905 3333 R1 269 13 Heteroz □ 20 28313 female 11/11/1999 5/17/2000 N/A dayS 2 905 3333 R1 269 14 Heteroz □ 20 28314 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 14 Heteroz □ 20 28315 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 15 Wild-ty □ 20 28315 female 11/11/1999 5/17/2000 N/A dayS 2 905 3333 R1 269 16 Heteroz □ 20 28316 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 16 Heteroz □ 20 28316 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 17 Wild-ty □ 20 28317 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 17 Wild-ty □ 20 28317 female 11/11/1999 12/14/1999 N/A dayS 2 905 3333 R1 269 73 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 3333 R1 269 74 Wild-ty □ 20 28319 female 12/2/1999 1/13/2000 N/A dayS 2 905 33
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				~~	•00		<u> </u>	- C-2 (B				~~^\	
ارا Si	blings	L	Same	Chimera	<i>W</i>		Sam		8 11	Sam	e Jar	<u>।स</u>	록,
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number	Sex	DOB	DOD	Age	Gen.	ES#	Chim.	<b>ES</b>	% Cans.	TC#	+/-	GL?	_1
45873	male	1/25/2000	3/3/2000	N/A days	3	905	3332	Rl	269	500	Heteroz	: □ m 4	<b>1</b>
45874	male	1/25/2000	11/24/2000	N/A days	3	905	3332	Rl	269	501	Wild-ty	<sup>,</sup> □ 📶	Ш
45875	male	1/25/2000	3/3/2000	N/A days	3	905	3332	Rl	269	502	Hetero 2	. □ m	
45876	female	1/25/2000	3/3/2000	N/A days	-3	905	3332	Rl	269	503	Hetero2	ெ	
45877	female	1/25/2000	3/3/2000	N/A days		905	3332	Rl	269	504	Heteroz		Ш
45878	female	1/25/2000	3/3/2000	N/A days		905	3332	R1	269	505	Heteroz		
	female	1/25/2000	7/6/2001	N/A days		905	3332	Rl	269	506	Wild-ty		
45879						905	3332	Rl	269	507	Homoz		
45880	female	1/25/2000		N/A days								:	
45881	female	1/25/2000		N/A days		905	3332	Rl	269	508	Wild-ty		
45882	female	1/25/2000		N/A days		905	3332	Rl	269	509	Hetero2		
45883	female	1/25/2000	11/22/2000	N/A days		905	3332	Rl	269	510	Homoz		
45884	female	1/25/2000	3/3/2000	N/A days	3	905	3332	Rl	269	511	Wild-ty		11
45885	male	1/25/2000	3/3/2000	N/A days	. 3	905	3332	Rl	269	512	Hetero2	لمهالا	
45886	male ·	1/25/2000	3/14/2000	N/A days	3	905	3332	Rl	269	513	Homozy	/ 🗆 📶	
45887	male	1/25/2000	3/3/2000	N/A days	3	905	3332	Rl	269	514	Heteroz		
45888	male	1/25/2000	3/14/2000	N/A days		905	3332	Rl	269	515	Homozy	/ □[m]	
49873	male			N/A days		905	3332	Rl	269	550	Homoz	:	
49874	male	2/17/2000		N/A days		905	3332	Rl	269	551	Unknov		
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	<del></del>					905	3332		269	553		:	41
49876	male	2/17/2000	4/20/2001	N/A days	3	YUJ	2224	Rl	409	225	44 TITI-13	المعال	7
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P.É	WER OF AT	TORNEY TO PROSECU	ITE APPLICAT	TIONS BEFORE THE	USPTO
<b>3</b> 7					*
CFR 3.73(	evoke ali previou (b).	s powers of attorney given in	the application to	entined in the attached star	tement under 57
I hereby ap	ppoint:				
⊠г	ractitioners assoc	ciated with the Customer Nur	mber: 20	6619	
OR					
	ractitioner(s) nan	ned below (if more than ten p	patent practitioners	are to be named, then a cu	ustomer number
must be us	sed):		·		
	Name	Reg. No.		Name	Reg. No.
		o represent the undersigned b			
		correspondence address for t	he application ider	ntified in the attached state	ment under 37
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## STATEMENT UNDER 37 CFR 3.73(b)

pplicant: Leviten, Michael W.

Docket No.: R67/75658.197

Application No.: 09/887,552

Entitled: Transgenic Mice Containing Cerberus Gene Disruptions

Deltagen, Inc., a corporation states that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of an assignment of the inventor(s) of the patent application identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel 012462, Frame 0575, or for which a copy thereof is attached.

Copies of assignments or other documents in the chain of title are attached.

The undersigned is authorized to act on behalf of the assignee.

Respectfully submitted,

11-22-05

26619

PATENT TRADEMARK OFFICE

John E. Burke, Reg. No. 35,836 Greenberg Traurig LLP

1200 17th Street, Suite 2400

Denver, CO 80202 (303) 685-7411

(720) 904-6111 (fax)

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